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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

SAUWAN LEUNG,

Plaintiff,

v.

**CAPITAL ONE BANK (USA) N.A.;
LEGAL RECOVERY LAW OFFICES,
INC.; AND, MARK WALSH,**

Defendants.

Case No.: '12CV2760 JLS BGS

**COMPLAINT FOR DAMAGES FOR
VIOLATIONS OF THE FAIR DEBT
COLLECTION PRACTICES ACT 15
U.S.C. §§ 1692-1692(P)**

JURY TRIAL DEMANDED

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INTRODUCTION

1. The United States Congress has found abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors, and has determined that abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy. Congress wrote the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq, to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.
2. The California legislature has determined that the banking and credit system and grantors of credit to consumers are dependent upon the collection of just and owing debts and that unfair or deceptive collection practices undermine the public confidence that is essential to the continued functioning of the banking and credit system and sound extensions of credit to consumers. The Legislature has further determined that there is a need to ensure that debt collectors exercise this responsibility with fairness, honesty, and due regard for the debtor's rights and that debt collectors must be prohibited from engaging in unfair or deceptive acts or practices.¹
3. SAUWAN LEUNG ("Plaintiff"), by Plaintiff's attorneys, brings this action to challenge the actions of CAPITAL ONE BANK (USA) N.A. (individually as "Capital One" or collectively as "Defendants"); LEGAL RECOVERY LAW OFFICES, INC. (individually as "LRLO" or collectively as "Defendants"); and, MARK D. WALSH (individually as "Walsh" or collectively as "Defendants") with regard to attempts by Defendants, debt collector, to unlawfully and abusively collect a debt allegedly owed by Plaintiff, and this conduct caused Plaintiff damages.
4. Plaintiff makes these allegations on information and belief, with the exception of those allegations that pertain to a plaintiff, or to a plaintiff's counsel, which Plaintiff alleges on personal knowledge.

¹ Cal. Civ. Code §§ 1788.1 (a)-(b)

5. While many violations are described below with specificity, this Complaint alleges violations of the statutes cited in their entirety.

6. Unless otherwise stated, Plaintiff alleges that any violations by Defendants were knowing and intentional, and that Defendants did not maintain procedures reasonably adapted to avoid any such violation.

7. Unless otherwise indicated, the use of any Defendants' name in this Complaint includes all agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers of that Defendants named.

JURISDICTION AND VENUE

8. Jurisdiction of this Court arises pursuant to 28 U.S.C. §1331; and, 15 U.S.C. § 1692k.

9. This action arises out of Defendants' violations of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692-1692(p) ("FDCPA").

10. Because Defendants do business within the State of California, personal jurisdiction is established.

11. Venue is proper pursuant to 28 U.S.C. § 1391.

12. At all times relevant, Defendants conducted business within the State of California.

PARTIES

13. Plaintiff is a natural person who resides in the City of North Hollywood, County of Los Angeles, State of California.

14. Defendant, Capital One, is located in the City of Richmond, in the State of Virginia.

15. Defendant, LRLO, is located in the City of San Diego, in the State of California.

16. Defendant, Walsh, is located in the City of San Diego, in the State of California.

17. Plaintiff is obligated or allegedly obligated to pay a debt, and is a "consumer" as that term is defined by 15 U.S.C. §1692a(3).

18. Defendants are persons who use an instrumentality of interstate commerce or the mails in a business the principal purpose of which is the collection of debts, or who regularly collect or attempt to collect, directly or indirectly, debts owed or due or asserted to be owed or due another and are therefore "debt collectors" as that phrase is defined by 15 U.S.C. §

1 1692a(6).

2 19. Plaintiff is a natural person from whom a debt collector sought to collect a consumer debt
3 which was due and owing or alleged to be due and owing from Plaintiff, and is a
4 “consumer” as that term is defined by 15 U.S.C. § 1692a(3).

5 **FACTUAL ALLEGATIONS**

6 20. Sometime before May 13, 2010, Plaintiff is alleged to have incurred certain financial
7 obligations to Capital One.

8 21. These financial obligations were primarily for personal, family, or household purposes and
9 are therefore a “debt” as that term is defined by 15 U.S.C. § 1692a(5).

10 22. Sometime thereafter, but before June 30, 2011, Plaintiff allegedly fell behind in the
11 payments allegedly owed on the alleged debt. Plaintiff currently takes no position as to the
12 validity of this alleged debt.

13 23. Subsequently, but before June 30, 2011, Defendant, Capital One, a debt collector pursuant
14 to the FDCPA, retained Defendant, LRLO, and Defendant, Walsh, also debt collectors
15 pursuant to the FDCPA, to proceed with legal action against Plaintiff for the collection of
16 Plaintiff’s alleged financial obligations.

17 24. Pursuant to the instructions of Defendant, Capital One, Defendant, LRLO, and Defendant,
18 Walsh, in the name of Capital One, filed a state collection case against Plaintiff on June 30,
19 2011 in the Stanley Mosk Superior Court based on Plaintiff’s consumer account that was
20 allegedly in default, Case No. 10E08051.

21 25. The purpose of the filing of the state case was not to pursue legitimate litigation, but to
22 cause Plaintiff financial hardship with the intent of coercing Plaintiff to pay the alleged
23 debt or merely hoping for Plaintiff’s default.

24 26. In the state case, Defendants brought causes of action for: (i) breach of written contract; (ii)
25 money had and received; and, (iii) account stated.

26 27. These causes of action had no merit, or evidentiary support, and were brought for the sole
27 purpose of coercing Plaintiff to pay this alleged disputed debt.

28 28. In the complaint filed in state court, Defendants alleged that an “Account Stated” had

1 previously been entered into between Plaintiff and Capital One when, in fact, this was not
2 true.

3 29. Through this conduct, Defendants used false representations or deceptive means to collect
4 or attempt to collect a debt or to obtain information concerning a consumer. Consequently,
5 Defendants violated 15 U.S.C. § 1692e and 15 U.S.C. § 1692e(10).

6 30. In the complaint filed in state court, Defendants stated that Plaintiff had entered into an
7 account stated “in writing” when, in fact, Defendants, knew or should have known that this
8 was untrue, and that no such writing existed. This communication to Plaintiff was a false,
9 deceptive, and misleading statement related to the collection of a debt.

10 31. Through this conduct, Defendants used false representations or deceptive means to collect
11 or attempt to collect a debt or to obtain information concerning a consumer. Consequently,
12 Defendants violated 15 U.S.C. § 1692e and 15 U.S.C. § 1692e(10).

13 32. At no time did Capital One, LRLO, or Walsh have any evidence of “writing,” and this
14 false, deceptive, and misleading representation was made only for the purposes of coercing
15 payment from a consumer.

16 33. At no time did Plaintiff enter into an account stated with anyone regarding this alleged
17 obligation.

18 34. In this action, Defendants used a false, deceptive, or misleading representations or means in
19 connection with the collection of a debt, in violation of 15 U.S.C. § 1692e and 15 U.S.C. §
20 1692e(10) because an action under an account stated requires that parties forgo any
21 previous contract and, *instead*, enter into a new contract, which never happened in this
22 case, a fact that Defendants either knew or should have reasonably known.

23 35. Defendants maintained this litigation up to and right before trial while all along knowing
24 that Defendants never intended to actually go through with the trial, but instead, continue
25 as an attempt to coerce a settlement.

26 36. Through this conduct, Defendants used false representations or deceptive means to collect
27 or attempt to collect a debt or attempt to collect a debt or to obtain information concerning
28 a consumer. Consequently, Defendants violated 15 U.S.C. § 1692e and 15 U.S.C. §

1 1692e(10).

2 37. Through this conduct, Defendants used an unfair or unconscionable means to collect or
3 attempt to collect any debt. Consequently, Defendants violated 15 U.S.C. § 1692f.

4 38. Through this action, Defendants caused Plaintiff to incur further litigation fees and costs.

5 39. It was never the intent of Defendants to proceed to trial, as this activity was only meant to
6 cause Plaintiff further expenses and coerce a settlement.

7 40. Through this conduct, Defendants threatened to take action that cannot be legally taken or
8 that is not intended to be taken. Consequently, Defendants violated 15 U.S.C. § 1692e(5).

9 41. Through this conduct, Defendants used an unfair or unconscionable means to collect or
10 attempt to collect any debt. Consequently, Defendants violated 15 U.S.C. § 1692f.

11 42. Pursuant to Code of Civil Procedure §128.7(b)(3), LRLO and Walsh certified to Plaintiff
12 and the Court that Capital One's allegations of account stated had evidentiary support,
13 when in fact Defendants did not possess any evidence of any account stated, which is a
14 written contract between the parties.

15 43. Though, Defendants did not possess such evidence, Defendants could have complied with
16 CCP § 128.7(b)(3) by stating in the complaint that they believed in good faith that such
17 evidence reasonably could be obtained. However, Defendants intentionally made no such
18 statement regarding their lack of possession of evidence in an effort to mislead Plaintiff
19 who would be justified in relying on CCP § 128.7(b)(3).

20 44. Through this conduct, Defendants used a false, deceptive, or misleading representation or
21 means in connection with the collection of a debt. Consequently, Defendants violated 15
22 U.S.C. § 1692e and 15 U.S.C. § 1692e(10).

23 45. Through this conduct, Defendants used an unfair or unconscionable means to collect or
24 attempt to collect any debt. Consequently, Defendants violated 15 U.S.C. § 1692f.

25 46. Prior to trial, rather than follow through on their threats, Defendants moved to dismiss the
26 case against Plaintiff *without prejudice* on August 23, 2012, thereby subjecting Plaintiff to
27 a future threat of litigation and denying Plaintiff the ability to vindicate himself through the
28 action.

1 47. None of the Defendants ever intended to take either action to trial, but used the threat of
 2 trial as a debt collection tactic to collect the alleged debt from Plaintiff through false,
 3 deceptive, and misleading means and threats to take action Defendants never intended to
 4 take.

5 48. Through this conduct, Defendants threatened to take action that cannot be legally taken or
 6 that is not intended to be taken. Consequently, Defendants violated 15 U.S.C. § 1692e(5).

7 49. Through this conduct, Defendants used an unfair or unconscionable means to collect or
 8 attempt to collect any debt. Consequently, Defendants violated 15 U.S.C. § 1692f.

9 **CAUSES OF ACTION CLAIMED BY PLAINTIFF**

10 **COUNT I**

11 **VIOLATION OF THE FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)**

12 **15 U.S.C. §§ 1692 ET SEQ.**

13 50. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though
 14 fully stated herein.

15 51. The foregoing acts and omissions constitute numerous and multiple violations of the
 16 FDCPA, including but not limited to each and every one of the above-cited provisions of
 17 the FDCPA, 15 U.S.C. §§ 1692 et seq.

18 52. As a result of each and every violation of the FDCPA, Plaintiff is entitled to any actual
 19 damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages for a knowing or willful
 20 violation in the amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and
 21 reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from each
 22 Defendants individually.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendants for:

- an award of actual damages, in an amount to be determined at trial, pursuant to 15 U.S.C. § 1692k(a)(1), against each named Defendants individually;
- an award of statutory damages of \$1,000.00, pursuant to 15 U.S.C. § 1692k(a)(2)(A);, against each named Defendants individually;
- an award of costs of litigation and reasonable attorney's fees, pursuant to 15 U.S.C. § 1692k(a)(3), against each named Defendants individually; and,
- any and all other relief that this Court deems just and proper.

Dated: November 13, 2012

Respectfully submitted,

KAZEROUNI LAW GROUP, APC

By: /s/ Abbas Kazerounian
 Abbas Kazerounian, Esq.
 Attorney for Plaintiff

TRIAL BY JURY

53. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: November 13, 2012

Respectfully submitted,

KAZEROUNI LAW GROUP, APC

By: /s/ Abbas Kazerounian
 Abbas Kazerounian, Esq.
 Attorney for Plaintiff

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